

1-1 By: Solomons, Shelton (Senate Sponsor - Wentworth) H.B. No. 1787  
1-2 (In the Senate - Received from the House April 29, 2009;  
1-3 May 4, 2009, read first time and referred to Committee on Business  
1-4 and Commerce; May 19, 2009, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;  
1-6 May 19, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1787 By: Watson

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the designation or appointment of registered agents for  
1-11 service of process, notice, or demand on certain entities or  
1-12 associations.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-14 SECTION 1. Subchapter E, Chapter 5, Business Organizations  
1-15 Code, is amended by adding Section 5.200 to read as follows:

1-16 Sec. 5.200. DEFINITIONS. In this subchapter:

1-17 (1) "Registered agent filing" means:

1-18 (A) the certificate of formation or similar  
1-19 organizational document of a domestic represented entity;

1-20 (B) the application for registration of a foreign  
1-21 represented entity;

1-22 (C) an appointment of agent by an unincorporated  
1-23 nonprofit association under Section 252.011;

1-24 (D) an appointment of agent by a Texas financial  
1-25 institution under Section 201.103, Finance Code;

1-26 (E) an appointment of agent by a defense base  
1-27 development authority under Section 379B.004(b), Local Government  
1-28 Code;

1-29 (F) a statement by a represented entity to change  
1-30 the entity's registered agent, registered office, or both;

1-31 (G) a certificate of merger or certificate of  
1-32 conversion;

1-33 (H) a certificate of amendment to the certificate  
1-34 of formation or similar organizational document or the registration  
1-35 of a represented entity;

1-36 (I) a restated certificate of formation or  
1-37 similar organizational document of a represented entity;

1-38 (J) any other instrument that is required or  
1-39 permitted by law to be filed by a represented entity that effects a  
1-40 change or correction to the instruments listed in Paragraphs  
1-41 (A)-(I); and

1-42 (K) a certificate of reinstatement filed under  
1-43 Chapter 9 or 11.

1-44 (2) "Represented domestic entity" means:

1-45 (A) a filing entity;

1-46 (B) an unincorporated nonprofit association for  
1-47 which an appointment of agent has been filed;

1-48 (C) a Texas financial institution for which an  
1-49 appointment of agent has been filed;

1-50 (D) a defense base development authority for  
1-51 which an appointment of agent has been filed; or

1-52 (E) any corporation, association, or other  
1-53 organization incorporated or organized under any special statute of  
1-54 this state, that is governed wholly or partly by this code, or to  
1-55 which the general corporate laws are applicable.

1-56 (3) "Represented entity" means a represented domestic  
1-57 entity or represented foreign entity.

1-58 (4) "Represented foreign entity" means:

1-59 (A) a foreign filing entity for which a  
1-60 registration has been filed;

1-61 (B) a foreign limited liability partnership for  
1-62 which a registration has been filed;

1-63 (C) a foreign financial institution for which a

2-1 registration has been filed; or  
 2-2 (D) any corporation, association, or other  
 2-3 organization incorporated or organized under the laws of a  
 2-4 jurisdiction other than this state that is granted authority to  
 2-5 conduct its affairs in this state under any special statute of this  
 2-6 state, that is governed wholly or partly by this code, or to which  
 2-7 the general corporate laws are applicable.

2-8 SECTION 2. Section 5.201(b), Business Organizations Code,  
 2-9 is amended to read as follows:

2-10 (b) The registered agent:  
 2-11 (1) is an agent of the entity on whom may be served any  
 2-12 process, notice, or demand required or permitted by law to be served  
 2-13 on the entity;

2-14 (2) may be:  
 2-15 (A) an individual who:  
 2-16 (i) is a resident of this state; and  
 2-17 (ii) has consented in a written or  
 2-18 electronic form to be developed by the office of the secretary of  
 2-19 state to serve as the registered agent of the entity; or

2-20 (B) an organization, other than the filing entity  
 2-21 or foreign filing entity to be represented, that:

2-22 (i) is registered or authorized to do  
 2-23 business in this state; and

2-24 (ii) has consented in a written or  
 2-25 electronic form to be developed by the office of the secretary of  
 2-26 state to serve as the registered agent of the entity; and

2-27 (3) must maintain a business office at the same  
 2-28 address as the entity's registered office.

2-29 SECTION 3. Subchapter E, Chapter 5, Business Organizations  
 2-30 Code, is amended by adding Section 5.2011 to read as follows:

2-31 Sec. 5.2011. CONSENT TO SERVE AS REGISTERED AGENT. (a) The  
 2-32 designation or appointment of a person as registered agent by an  
 2-33 organizer or managerial official of an entity in a registered agent  
 2-34 filing is an affirmation by the organizer or managerial official  
 2-35 that the person named as registered agent has consented to serve in  
 2-36 that capacity.

2-37 (b) If a person designated or appointed as registered agent  
 2-38 in a registered agent filing before the sale, acquisition, or  
 2-39 transfer of a majority-in-interest or majority interest of the  
 2-40 outstanding ownership or membership interests of the represented  
 2-41 entity continues to serve in that capacity after the sale,  
 2-42 acquisition, or transfer, the person's continuation of service is  
 2-43 an affirmation by the governing authority of the represented entity  
 2-44 that the governing authority has verified that the person named as  
 2-45 registered agent has consented to continue to serve in that  
 2-46 capacity.

2-47 SECTION 4. Section 5.204(d), Business Organizations Code,  
 2-48 is amended to read as follows:

2-49 (d) On compliance with Subsections (b) and (c), the  
 2-50 appointment of the registered agent and the designation of the  
 2-51 registered office terminate [~~terminates~~]. The termination is  
 2-52 effective on the 31st day after the date the secretary of state  
 2-53 receives the notice.

2-54 SECTION 5. Subchapter E, Chapter 5, Business Organizations  
 2-55 Code, is amended by adding Sections 5.205, 5.206, 5.207, and 5.208  
 2-56 to read as follows:

2-57 Sec. 5.205. REJECTION OF APPOINTMENT. (a) A person  
 2-58 designated or appointed as an entity's registered agent in a  
 2-59 registered agent filing without the person's consent may terminate  
 2-60 the person's appointment or designation as registered agent by  
 2-61 filing a statement of rejection of appointment with the filing  
 2-62 officer.

2-63 (b) The statement of rejection of appointment must:  
 2-64 (1) be signed by the person named as registered agent;  
 2-65 (2) contain the name of the represented entity; and  
 2-66 (3) contain a statement certifying that the person did  
 2-67 not consent to serve as the represented entity's registered agent  
 2-68 on the date on which the registered agent filing on which the person  
 2-69 is named as registered agent took effect.

3-1 (c) On acceptance of the statement of rejection of  
3-2 appointment by the filing officer, the designation or appointment  
3-3 of that person as registered agent and the designation of the  
3-4 registered office terminate.

3-5 (d) On termination of the designation or appointment of a  
3-6 registered agent and the designation of the registered office, the  
3-7 secretary of state shall send notice to the represented entity of  
3-8 the necessity to designate or appoint a new registered agent and  
3-9 registered office in accordance with Section 9.101 or 11.251, as  
3-10 applicable.

3-11 (e) The filing officer may not charge a fee for the filing of  
3-12 a statement of rejection of appointment.

3-13 Sec. 5.206. DUTIES OF REGISTERED AGENT. (a) The only  
3-14 duties of a registered agent are to:

3-15 (1) receive or accept, and forward to the represented  
3-16 entity at the address most recently provided to the registered  
3-17 agent by the represented entity, or otherwise notify the  
3-18 represented entity at that address regarding, any process, notice,  
3-19 or demand that is served on or received by the registered agent; and

3-20 (2) provide the notices required or permitted by law  
3-21 to be given to the represented entity to the address most recently  
3-22 provided to the registered agent by the represented entity.

3-23 (b) A person named as the registered agent for a represented  
3-24 entity in a registered agent filing without the person's consent is  
3-25 not required to perform the duties prescribed by this section.

3-26 Sec. 5.207. DESIGNATION OF REGISTERED AGENT WITHOUT  
3-27 CONSENT; PENALTIES AND LIABILITIES. Sections 4.007 and 4.008 apply  
3-28 with respect to a false statement in a registered agent filing that  
3-29 names a person the registered agent of a represented entity without  
3-30 the person's consent.

3-31 Sec. 5.208. IMMUNITY FROM LIABILITY. (a) A person  
3-32 designated or appointed as the registered agent of a represented  
3-33 entity is not liable solely because of the person's designation or  
3-34 appointment as registered agent for the debts, liabilities, or  
3-35 obligations of the represented entity.

3-36 (b) A person who has been designated or appointed as a  
3-37 registered agent in a registered agent filing but has not consented  
3-38 to serve as the represented entity's registered agent may not be  
3-39 held liable:

3-40 (1) under a judgment, decree, or order of a court,  
3-41 agency, or tribunal of any type, or in any other manner, in this or  
3-42 any other state, or on any other basis, for a debt, obligation, or  
3-43 liability of the represented entity, whether arising in contract,  
3-44 tort, or otherwise, solely because of the person's designation or  
3-45 appointment as registered agent; or

3-46 (2) to the represented entity or to a person who  
3-47 reasonably relied on the unauthorized designation or appointment  
3-48 solely because of the person's failure or refusal to perform the  
3-49 duties of a registered agent under Section 5.206.

3-50 SECTION 6. The changes in law made by this Act apply only to  
3-51 the designation or appointment of a registered agent made on or  
3-52 after the effective date of this Act. The designation or  
3-53 appointment of a registered agent made before the effective date of  
3-54 this Act is governed by the law in effect on the date the  
3-55 designation or appointment was made, and the former law is  
3-56 continued in effect for that purpose.

3-57 SECTION 7. This Act takes effect January 1, 2010.

3-58 \* \* \* \* \*